ORIGINAL

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	)	
	)	
	)	Docket No. 00-0259
Petition for expedited approval of implementation of a market-based alternative tariff, to become effective on or before May 1, 2000, pursuant to Article IX and Section 16-112 of the Public Utilities Act	)	

BRIEF ON EXCEPTIONS OF ENRON ENERGY SERVICES, INC.

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Enron Energy Services, Inc. ("Enron"), by its attorneys Piper Marbury Rudnick & Wolfe, objects to both the initial and the revised schedule adopted by the Hearing Examiner in the instant proceeding and, without waiving any objection, hereby submits to the Illinois Commerce Commission ("Commission") its Brief on Exceptions to the Hearing Examiner's Proposed Order issued on April 20, 2000 ("Proposed Order") regarding the petition for approval of a market-based alternative ("Petition") to the Neutral Fact-Finder ("NFF") filed by Commonwealth Edison Company ("Edison") pursuant to Section 16-112(a) and Article IX of the Public Utilities Act (the "Act"). Pursuant to Section 200.830 of the Commission's Rules of Practice, replacement language for the exceptions taken herein is attached hereto and made a part hereof as Attachment A.

In addition to Enron, the Attorney General of the State of Illinois ("Attorney General"), Central Illinois Light Company ("CILCO"), the City of Chicago ("City"), CMS Marketing, Trading and Services Company ("CMS"), the Illinois Industrial Energy Consumers ("IIEC"), MidAmerican Energy Company ("MidAmerican"), the Midwest Independent Power Suppliers Coordination Group ("MWIPS"), NewEnergy Midwest, L.L.C., and the Commission Staff

("Staff") all have raised important procedural and substantive issues which the Commission must address.

I.

EXECUTIVE SUMMARY:

THE COMMISSION SHOULD MODIFY THE PROPOSED ORDER TO REJECT EDISON'S PROPOSED ALTERNATIVE TO THE NEUTRAL FACT-FINDER PROCESS

The Proposed Order recognizes that there are flaws in Edison's proposal and flaws in the process employed in the instant proceeding but then fails to recommend any modifications that would remedy those flaws. Instead, the Proposed Order suggests that because under the recommended modifications the tariff would be voluntary and last for only one year, the Commission can wait to solve the problems. However, the Commission is charged with promoting competition and ensuring that the tariffs are just and reasonable. (*See* 220 ILCS 5/9-201, 16-101A(d).) The Commission also must ensure that the due process rights of parties are protected. (*See* 220 ILCS 100/1-30, 5/10-101.) The Commission should not and cannot ignore those statutory obligations as is suggested by the Proposed Order. Therefore, the Commission should modify the Proposed Order to reject Edison's Petition.

II.

THE PROPOSED ORDER FAILS TO RESOLVE THE FUNDAMENTAL FLAWS IN EDISON'S PROPOSAL

Despite parties not having an adequate opportunity to conduct discovery or present competing viewpoints, the comments filed by the parties identified a number of flaws in Edison's proposal, demonstrating that the proposed tariffs are unjust and unreasonable. As parties have begun to analyze the proposal, substantive flaws have come to light. Even one party

that apparently thought that Edison's original proposal should be approved now has been convinced that, at a minimum, modifications should be made. (*See generally* Verified Comments of NewEnergy.) Indeed, the Proposal Order itself seems to recognize that Edison's proposal is flawed. (*See* Proposed order at 25.) Unfortunately, the Proposed Order suggests that the Commission should adopt the proposal without recommending substantive modifications to resolve these flaws.

Although parties have not had a fair or adequate opportunity to probe or analyze Edison's proposal, the following flaws already have been revealed:

(1) The underlying markets can be manipulated. Staff, Enron and almost all of the parties recognize that Edison's proposal would allow improper manipulation of the markets. (*See* Direct Testimony of Staff witness Richard J. Zuraski at 17-19; Objection and Verified Comments of Enron at 4-7; Comments of City at 5; IIEC Verified Comments on Commonwealth Edison Company's Alternative to the NFF at 5-7; Verified Comments of NewEnergy at 9-11.) Even the Proposed Order recognizes that the markets represented by Altrade and Bloomberg are thinly traded and leave open the potential for price manipulation. (*See* Proposed Order at 25.)

(2) The proposed index is merely a means to improperly shift risk from Edison and its shareholders to ARES and ratepayers. Edison's proposal improperly puts ratepayers at risk for summer price spikes. (*See* Objection and Verified Comments of Enron at 2.)

(3) The proposal would use markets that presently are not actively traded. The lack of trades being listed on Altrade or Bloomberg indicates that the actual trading is occurring somewhere else. (*See* Objection and Verified Comments of Enron at 5; Zuraski at 16; Comments of the City at 4-5.) Edison's proposal "is based more on the anticipation of a

functioning, efficient market than on the existence of such a market." (Comments of the City at 4.)

(4) The screen print process invites abuse. The two-hour window for "manual" screen prints improperly would allow for further manipulation and would provide Edison with an unfair competitive advantage. (*See* Objection and Verified Comments of Enron at 6; IIEC Comments at 8.)

(5) The proposal does not allow complete transparency. As Edison admits, "Customers must have confidence in the marketplace and their voluntary participation in it." (*See Comments of Commonwealth Edison Company*, Presented to the Commission March 21, 2000, attached to Edison's Comments, at 8.) Both the Altrade and Bloomberg markets are only open to subscribers, precluding customers from viewing the markets and undermining customer confidence. (*See* IIEC Comments at 8.)

(6) The proposal improperly relies upon systems that have no oversight. Lack of oversight obviously increases the risk of market manipulation. (*See* Objection and Verified Comments of Enron at 4; IIEC Comments at 7.)

(7) The proposal is not a statewide solution. The proposal improperly would further erode uniformity in rates and would discourage the development of competition throughout the state. (*See* Objection and Verified Comments of Enron at 10-11.) As Edison admitted, the Commission should not attempt to create "competitive islands" throughout the state. (*See Comments of Commonwealth Edison Company*, Presented to the Commission March 21, 2000, attached to Edison's Comments, at 8.) The present neutral fact finder approach has the positive effect of determining a single set of market values for the entire state.

(8) The proposal improperly would increase customer confusion. Edison's proposal would confuse customers even more than the current process. (*See* Objection and Verified Comments of Enron at 3, 9-10.)

(9) The proposed index likely contains a hidden revenue increase. Because Edison does not recognize a negative transition charge, the increase in the transition charges in the winter likely will not be offset by a decrease in the transition charges during the summer. (*See* City of Chicago Comments at 5-6.)

(10) The proposal improperly would "front load" the collection of transition charges. In essence, the proposal would result in an "interest free loan" to Edison, providing no compensation to customers who would be pre-paying transition charges. (*See* IIEC Comments at 11-12; Petition for Leave to Intervene of MidAmerican Energy Company at 5-6.)

(11) On-peak prices would be too low. The use of bids and offers to replace actual trades would artificially deflate the on-peak market prices. (*See* Verified Comments of NewEnergy at 16-17.)

(12) Off-peak prices would be too low. Averaging data from Power Market Week's *Daily Price Report* would artificially deflate off-peak market prices. (*See* Verified Comments of NewEnergy at 18-19.)

(13) The proposed index does not reflect the fair market value of serving retail customers. The proposal fails to provide any adjustment for uncertainty and variability associated with serving retail load. (*See* Verified Comments of NewEnergy at 9-10.)

(14) The proposed index fails to account for the difference between wholesale and retail transactions. Failure to adjust the wholesale trades would result in the market values being too low. "The distinction between wholesale and retail markets has been recognized even

by utility representatives . . .. The failure to address this issue in a proposal that is intended to cure the ills of the NFF process cannot be lightly dismissed." (Comments of the City at 5.)

(15) Approval of the proposal would violate the Act. Aside from the procedural due process problems associated with the proposal, the parties have explained that the proposal is contrary to the Act. Specifically:

(a) The proposal illegally would rely upon historic data. Any alternative to the NFF be based upon an index, not historic data. (*See* 220 ILCS 5/16-112(a). *See also* Objection and Verified Comments of Enron at 11-12.)

(b) The proposal does not represent a market in which Edison sells and its customers buy electricity. It is undisputed that customers cannot buy in the Altrade or Bloomberg markets. (*See* 220 ILCS 5/16-112(a). *See also* Objection and Verified Comments of Enron at 12.)

(c) The proposal fails to establish a procedure for determining the market value for each of the years the neutral fact finder sets market values. (*See* 220 ILCS 5/16-112(a). *See also* IIEC Comments at 10-11.)

(d) Edison failed to provide proper notice regarding its proposal. (*See* 220 ILCS 5/9-101, -102, -201, -250. *See also* IIEC Comments at 12-14.)

While failing to resolve any of these issues, the Proposed Order suggests that the Commission approve a tariff that admittedly contains multiple flaws. Even in the limited time provided, and the limited ability to develop a record, the parties have been able to highlight fundamental problems associated with the proposed tariff. A finding that this proposal is "just and reasonable" would not be credible. A finding that the proposal will promote competition simply would be wrong. An Order that approves the proposal would constitute reversible error.

III.

THE SCHEDULE AND PROCEDURE UTILIZED BY THE PROPOSED ORDER VIOLATES THE COMMISSION'S RULES AND ALL NOTIONS OF DUE PROCESS

The schedule adopted does not allow adequate time for the parties to fully address and analyze the issues, much less propose alternatives, and does not allow for the Commission to be fully informed and have a full record upon which to deliberate on these very important issues. In addition to Enron, the Staff, the Attorney General, CILCO, the City, CMS, the IIEC, and the MWIPS all soundly criticize the bizarre manner in which the instant proceeding presently is being conducted. Contrary to the implication in the Hearing Examiner's Revised Scheduling Ruling dated April 20, 2000, the scheduling revisions do nothing to address the parties concerns. Thus, this process has been objected to by the Attorney General, who is the primary interpreter and enforcer of Illinois law; the largest municipality in Illinois; independent marketers; a coalition of power suppliers; and a coalition that includes some of the largest industrial customers in Illinois. Significantly, all consumer groups who are represented have objected to this process.

In deciding to reject a modification proposed by Staff, the Proposed Order concludes that "despite the expedited nature of this proceeding, it is still necessary to proceed in a manner that maintains due process and fundamental fairness to all parties." (*See* Proposed Order at 17.) Of course, if the Commission were to decide **any** of the substantive issues in the instant proceeding it would fail to provide due process or fundamental fairness to the parties.

The schedule and procedure employed by the Hearing Examiner violates due process and is contrary to the Commission's rules, Commission practice and Illinois law. Edison's petition improperly requested and the Commission improperly adopted a schedule that is unfair, illegal,

inappropriate, unrealistic, unworkable, and unheard of in the experience of prior Commission proceedings. Contrary to the assertion in the Proposed Order, **no** party has shown good cause that would justify the Commission's expedited treatment of this matter. (*See* Proposed Order at 23.)

A. THE PROCESS AND SCHEDULE IS CONTRARY TO COMMISSION RULES AND PRACTICE

The schedule adopted for the instant proceeding violates the Commission's Rules and is contrary to Commission practice. As the Proposed Order recognized, Edison filed its petition on Friday, March 31, 2000, seeking an order by April 27, 2000, less than twenty business days after the filing. (*See* Proposed Order at 22.)

After receiving responses and replies to Edison's scheduling proposal, the Hearing Examiner adopted a "paper hearings" procedure for the instant proceeding. (*See* Notice of Hearing Examiner's Scheduling Ruling, April 13, 2000.) The Commission's Rules do provide for a "paper hearing" in which material issues are resolved on the basis of written pleadings and submissions verified by affidavit. (*See* 83 Ill. Adm. Code 200.525(a)). However, such a "paper hearing" requires a stipulation to the waiver of any rights that parties have to a hearing. (*See id.*) This stipulation must be approved by **all** parties, the Staff and the Hearing Examiner. (*See* 83 Ill. Adm. Code 200.525(b).) (Emphasis added.)

As properly recognized by the Attorney General, while the issue of paper hearings was discussed at a pre-hearing conference on April 13, 2000, all parties did ***not*** agree to waive any rights to a hearing. (*See* Attorney General Comments at 6.) Therefore, the Hearing Examiner's Scheduling Ruling, that did not provide for a hearing, but rather responsive comments, created a "paper hearing" as defined in the Commission's Rules. (*See* 83 Ill. Adm. Code 200.525(a). *See*

also Attorney General Comments at 6.) The Hearing Examiner's Scheduling Ruling violates Section 200.525(a) of the Commission's Rules.

The Commission's Rules of Practice also allow for the waiver of a party's rights to cross-examination, but again this waiver is only valid upon the approval of **all** parties, the Staff and the Hearing Examiner. (*See* 83 Ill. Adm. Code 200.615.) (Emphasis added.) At **no** time did the Hearing Examiner or Edison seek parties to waive its right to cross-examination. However, the schedule adopted in the instant proceeding does not provide for cross-examination, in violation of the Commission's Rules. (*See id.*)

Even if allowing this unfair process were within the Commission's discretion, the Commission's Rules of Practice set forth the standards that the Commission should use when exercising its discretion. (*See* 83 Ill. Adm. Code 200.25(a)-(e).) The Commission's Rules explain that maintaining the integrity of the fact-finding process is the primary goal of the hearing process. "The principal goal of the hearing process is to assemble a **complete factual record** to serve as basis for a **correct** and **legally sustainable** decision." 83 Ill. Adm. Code 200.25(a). (Emphasis added.) As Staff and other parties properly note, the current procedure undermines the very goals of the Commission's Rules of Practice. (*See* Staff Response to Schedule at 3; Attorney General Comments at 2; City Comments at 1-4; Enron Objection and Verified Comments at 15-19; IIEC Comments at 1-3; IIEC Response to Schedule at 1, 2, 3, 5; MWIPS Response to Schedule at 2.)

Edison's proposal and the schedule adopted by the Hearing Examiner requires the Commission to make fundamental legal and policy decisions that will determine the future structure of the electric industry in the State of Illinois without the benefit of cross-examination or the orderly presentation of alternative viewpoints. Significantly, the Hearing Examiner made

no findings that would justify deviating from the Commission's rules or Commission practice. The schedule adopted by the Hearing Examiner in the instant proceeding clearly would undermine public perception and confidence in the integrity of the ratemaking process at the Commission. Any Order entered as a result of such a process would constitute reversible error. (*See BPPI v. Illinois Commerce Comm'n*, 136 Ill. 2d 192, 228, 555 N.E.2d 693, 709 (1989).)

B. THE PROCEDURE AND SCHEDULE ADOPTED BY THE HEARING EXAMINER IS INCONSISTENT WITH THE ACT AND VIOLATES PARTIES' DUE PROCESS RIGHTS

Contrary to the conclusion reached in the Proposed Order, **no** party has provided the Commission with good cause to justify deviations from the ratemaking provisions and due process protections contained in Article IX of the Act. (*See* Proposed Order at 23.) Indeed, it appears that the only "cause" for Edison seeking expedited treatment of its proposal is merely to shift the risk of price spikes this summer from Edison and its shareholders to ratepayers and ARES. (*See* Enron Comments at 1, 12, 19.) The Proposed Order improperly accepts Edison's assertions regarding the merits of its proposal as the "good cause shown" to dispense with the Notice requirements in Article IX of the Act.

As properly recognized by Attorney General and the IIEC, Edison has failed to provide appropriate notice of its proposed change in rates as required by Article IX of the Act. (*See* 220 ILCS 5/9-201(a). *See also* Attorney General Comments 2-4; IIEC Comments at 12-13.) The Act allows changes to rates and charges without requiring the 45 days' notice upon a showing of good cause. (*See* 220 ILCS 5/9-201(a).) However, it appears that the Proposed Order improperly accepts Edison's bare assertions that its proposal would "likely perform better" than the NFF as the basis for a finding of "good cause shown." (*See* Proposed Order at 24.)

Additionally, since the Commission conducted a hearing on April 13, 2000, the instant proceeding must be conducted as a contested case under Section 10-101 of the Act. (*See* 220 ILCS 5/10-101.) Contested cases are adjudicatory in nature, and must be determined by an agency only after an opportunity for a hearing. (*See* 5 ILCS 100/1-30.) In such cases, the Commission's own rules provide for "full disclosure of all relevant and material facts to a proceeding." (*See* 83 Ill. Adm. Code 200.340.) Notwithstanding Edison's desire to have the Commission implement a fast-track approach, this is an adjudicatory proceeding, and as such fundamental due process protections are appropriate.

Pursuant to both the Illinois Administrative Act and constitutional principles of procedural due process in contested cases before the Commission, parties are entitled to a hearing, an opportunity to present evidence and the ability to cross-examine adverse witnesses. (*See Abrahamson v. Ill. Dep't of Prof. Regulation*, 153 Ill.2d 76, 92, 606 N.E.2d 1111, 1120 (1992); *People* ex rel. *Ill. Commerce Comm'n v. Operator Communication, Inc.*, 281 Ill.App.3d 297, 301-03, 666 N.E.2d 830, 832-34 (1st Dist.), *appeal denied* 168 Ill.2d 623, 671 N.E.2d 742 (1996); *Stillo v. State Retirement Sys.*, 305 Ill.App.3d 1003, 1009, 714 N.E.2d 11, 16 (1st Dist. 1999).) Due process requires not only the technical opportunity to be heard, but also the opportunity to be heard at a meaningful time and in meaningful manner. (*See Petersen v. Chicago Plan Comm'n of City of Chicago*, 302 Ill.App.3d 461, 466, 707 N.E.2d 150, 154 (1st Dist. 1998).) The Commission's Rules of Practice provide that in order to eliminate the requirement for a hearing, Staff, all parties to the proceeding and the Hearing Examiner all must agree that such approach is appropriate. (*See* 83 Ill. Adm. Code 200.525.) A number of parties including Staff and Enron objected to the elimination of hearings in the instant proceeding. The

unprecedented expedited schedule robs Enron and other intervenors of any meaningful opportunity to be heard and is clearly prejudicial to their interests.

The schedule adopted for the instant proceeding is unlike any seen in the history of Commission practice, especially for a rate proceeding of such magnitude. If any alternative to the NFF is adopted, it would fundamentally alter the structure of the Illinois energy market for the foreseeable future. The Commission should not make significant legal and policy decisions without the benefit of a procedural schedule that allows for a full and complete record to serve as the basis for a legally sustainable order.

IV.

CONCLUSION

The Commission should have the same concerns with Edison's present proposal as it had with Edison's proposal to base an alternative upon the CINergy index. A thinly traded market increases the possibility of market manipulation. As recognized by the Commission, "such potential for market manipulation could have a chilling effect on the development of a competitive electric energy market in Illinois." (*See* Commonwealth Edison Company, *Petition for approval of an alternative methodology for calculating market values pursuant to Article IX and Section 16-112 of the Public Utilities Act,* ICC Docket No. 99-0171, Order at 16.) In light of the thinly traded nature of the markets represented by Altrade and Bloomberg, as well as the even greater potential for abuse and manipulation, the lack of any third-party executor to protect against manipulation, and the lack of complete record, the Commission should similarly reject Edison's current proposal at this time. As desirable as it may be to move to an alternative to the NFF, that movement should not be undertaken if there are too many open questions about the effect of so doing. The schedule adopted precludes the parties from thoroughly examining the

numerous factual questions and deficiencies identified by Enron and other parties. If, however, the Commission does decide to approve an alternative to the NFF, the Commission should adopt the suggestion in the Proposed Order to require that Edison continue to offer its existing Rider PPO-NFF tariff.

WHEREFORE, in accordance with arguments herein and in its Objection and Verified Comments, Enron Energy Services, Inc. respectfully request that the Commission revise the Proposed Order to:

(1) Deny Edison's Petition, consistent with the arguments contained herein or, in the alternative, set an appropriate schedule that does not violate the due process rights of the parties to the instant proceeding;

(2) Schedule continued meetings of the Electric Policy Committee with representatives of and participants in other exchange traded indices, including but not limited to Palo Verde, CINergy, COB, PJM, TVA, and ERCOT, in order to develop an appropriate and workable alternative to the NFF process;

(3) If, the Commission does decide to approve an alternative to the NFF, the Commission should require that Edison continue to offer its existing Rider PPO-NFF tariff; and

(4) Grant such further additional or different relief as the Commission deems appropriate.

Respectfully submitted,

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Dated: April 24, 2000

IV. COMMISSION CONCLUSIONS

On March 31, 2000, ComEd filed a petition seeking an order approving the implementation of tariffs attached to its petition by April 27, less than twenty business days after the filing, with these tariffs to become effective May 1, 2000. These tariffs would incorporate a market index based methodology for purposes of determining market value under Section 16-112 of the Act. Among other things, the tariffs provide that peak market values would be determined using forwards transaction prices as listed on Altrade™ and Bloomberg PowerMatch, which Edison characterizes as two real time, online electronic trading exchanges which post forward market prices for the Into ComEd hub.

Numerous parties intervened in this proceeding. Some parties, such as PE Services and Nicor Energy, which are ARES, recommend approval of ComEd's proposal as filed. Others, such as **the Attorney General, the City of Chicago, CILCO,** IIEC and Enron, oppose the proposal; among other arguments, they claim the schedule in place in this docket does not allow sufficient time for a meaningful analysis of Edison's proposal. Other parties, such as MEC and CMS Marketing, support the proposal on the condition that certain modifications are made. Another party, NewEnergy, supports ComEd's proposed methodology, but not for periods beyond May, 2001.

The petition was filed "pursuant to Article IX and Section 16-112" of the Act. Section 16-112 is entitled "Determination of Market Value." Section 16-112(a) provides in part, "The market value to be used in the calculation of transition charges . . . shall be determined in accordance with either (i) a tariff that has been filed by the electric utility . . . pursuant to Article IX of this Act and that provides for a determination of the market value for electric power and energy as a function of an exchange traded or other market traded index, options or futures contracts applicable to the market in which the utility sells, and the customers in its service area buy, electric power and energy, or (ii) in the event no such tariff has been placed into effect . . . , or in the event such tariff does not establish market values for each of the years specified in the neutral fact finder [NFF] process described in subsections (b) through (h) of this Section, a tariff incorporating the market values resulting from the . . . NFF process set forth in subsections (b) through (h) of this Section."

Section 16-112(m) states, in part, "[t]he Commission may approve or reject, or propose modifications to, any tariff providing for the determination of market value that has been proposed by an electric utility pursuant to subsection (a) of this Section, but shall not have the power to otherwise order the electric utility to implement a modified tariff or to place into effect any tariff for the determination of market value other than one incorporating the neutral fact-finder procedure set forth in this Section." Normally, when the Commission approves a tariff it has the statutory authority to investigate and modify such tariff at a later date. This authority can be particularly important when a tariff is approved on less than 45 days' notice.

With regard to Article IX, which is entitled "Rates," the basic procedures for proposing changes in tariffs affecting rates, charges or practices relating thereto are set out in Section 9-201. Section 9-201(a) of the Act states in part, "[t]he Commission, for good cause shown, may

allow changes [in any rate or other charge] without requiring the 45 days' notice provided for, by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published." The Commission notes that requests for "special permission" to modify a tariff on less than 45 days' notice are far from unheard of at the Commission. However, as observed above, when the Commission approves a tariff it normally has the statutory authority to investigate and modify such tariff at a later date, and the Commission believes this authority can be particularly important when a tariff is approved on less than 45 days' notice.

The Commission notes that several parties object to the procedure by which ComEd has attempted to implement its proposal in this proceeding. IIEC, for example, appears to assert that 45 days' notice is always required under Section 9-201 of the Act. While the **Attorney General and the** City acknowledge~~s~~ that 45 days' notice is not necessarily required, **they** ~~it~~ contend~~s~~ that there has not been good cause shown to justify placing the proposed tariffs in effect on an expedited basis. ~~**To the extent this issue is before the Commission, t**~~The Commission find~~s~~, ~~**based on the record in this proceeding and subject to the proposed modifications discussed below,**~~ that there has **not** been good cause shown to justify the Commission's expedited treatment of this matter.

Edison's petition improperly requested a schedule that was unfair, inappropriate, unrealistic, unworkable, and unheard of in the experience of prior Commission proceedings. Basically, Edison's proposal requires the Commission to make fundamental legal and policy decisions that will determine the future structure of the electric industry in the State of Illinois without the benefit of cross-examination or the orderly presentation of alternative viewpoints. The Commission must ensure that the due process rights of parties are protected. (See 220 ILCS 100/1-30, 5/10-101.) The Commission's Rules of Practice set forth the standards that the Commission should use when exercising its discretion. (See 83 Ill. Admin. Code 200.25(a)-(e).) The Commission's Rules explain that maintaining the integrity of the fact-finding process is the primary goal of the hearing process. "The principal goal of the hearing process is to assemble a complete factual record to serve as basis for a correct and legally sustainable decision." 83 Ill. Admin Code 200.25(a). (Emphasis added.) As Staff and other parties properly note, Edison's request would undermine the very goals of the Commission's Rules of Practice. (See Staff Response to Schedule at 3; Attorney General Comments at 2; City Comments at 1-4; Enron Comments at 15-19; IIEC Comments at 1-3; IIEC Response to Schedule at 1, 2, 3, 5; MWIPS Response to Schedule at 2.)

The Commission will not allow Edison to utilize the workshop process as a substitute for the procedural safeguards required by due process. While in certain circumstances workshops and other informal negotiation sessions can benefit parties and save Commission resources, workshops are not an adequate substitute for constitutionally protected due process safeguards. A failure to maintain this distinction would undermine the legitimacy of the Commission's decision-making process, would be a significant departure from the Commission's historic practice, and likely would constitute reversible error. See BPPI v. Ill. Commerce Comm'n, 136 Ill.2d 192, 228, 555 N.E.2d 693, 709 (1989) (Commission decisions entitled to less deference when they drastically depart from past

practice). Additionally, failure to maintain this distinction would set a dangerous precedent for participation in future workshops.

Serious questions exist regarding Edison's proposal. Parties must be allowed to conduct proper discovery, present testimony, and cross-examine Edison's witnesses. The procedure which Edison suggested to implement its proposal does not allow adequate time for the parties to fully address and analyze the issues, much less propose alternatives, and does not allow the Commission to be fully informed and have a full record upon which to deliberate on those issues.

The Commission is fully aware of the shortcomings attributed to the NFF process. Unfortunately, while ComEd has developed a tariff that has the potential to provide significant benefits to some customers and suppliers, **the Commission agrees with the** ~~some~~ parties ~~have complained~~ that the time frame proposed by ComEd has provided little time for scrutiny of this tariff by parties and by the Commission. Furthermore, if the tariff is approved as proposed, ComEd says the Commission is precluded by statute from directing ComEd to modify the tariff in the future. Although ComEd says it will provide reports and work with the parties on this issue, the Commission does not find these offers particularly reassuring or convincing in light of ComEd's statement that it is not waiving its right to reject future proposed modifications to Rider PPO-MI.

In any event, having reviewed the record in this case, the Commission finds that ComEd should **not** be authorized to implement its proposed market index based tariff**. As desirable as it may be to move to an alternative to the NFF, that movement cannot be undertaken if there are too many uncertainties about the effect of so doing. Legitimate questions have been raised about the liquidity of the markets represented by Altrade and Bloomberg. The Commission is deeply concerned about using prices in a low volume market for fear of potential price manipulation. The markets represented by Altrade and Bloomberg may be more thinly traded than the CINergy index that was rejected by the Commission last summer after a thorough examination that afforded parties the right to conduct discovery, present evidence, cross-examine witnesses, and submit briefs. In light of the thinly traded nature of the markets represented by Altrade and Bloomberg, as well as the even greater potential for abuse and manipulation, and the lack of any third party executor to protect against manipulation, the Commission similarly rejects Edison's current proposal at this time.** ~~, subject to the modifications set forth below. Edison claims its proposal is superior to the current NFF methodology for purposes of determining market value, in that it more accurately reflects activity in the relevant regional market, provides visible and current price signals, and enables better forecasting of future market values. Further, ComEd presented information intended to show that the increased market values using its proposed method will reduce annual transition charges and increase PPO prices over the summer months, as compared to the NFF approach, better aligning these charges with actual market data. In addition, several parties, including certified ARES, have indicated that ComEd's proposal has merit when compared to market values established using the NFF methodology.~~

~~Based on the information presented, the Commission believes it has been shown that ComEd's proposal would likely perform better in these respects than does the NFF methodology. However, the Commission also believes there should be some means in place by which this proposal can be formally reviewed in the future, particularly considering the short review period in this case along with the substantive concerns expressed by other parties, such as IIEC's primary concern regarding the potential "thinness" of the market represented by Altrade and Bloomberg PowerMatch. The concerns raised by several parties regarding the potential for manipulation and the unregulated nature of these internet based markets further support the Commission's conclusion that there should be an additional opportunity for the Commission to formally review the merits of ComEd's proposal and then determine if it should be adopted on a long term basis.~~

~~In order to mitigate the concerns of the parties and the Commission described above, the Commission is of the opinion that some modifications to ComEd's proposal would be appropriate. Before identifying the specific modifications, and in connection therewith, the Commission first notes, as explained above, that ComEd is also proposing various transitional provisions in both its tariffs and testimony. For example, under ComEd's proposal, customers will be given the choice to remain with charges that reflect the NFF methodology for the remainder of 2000 or move to those set using the market index methodology.~~

~~The Commission also notes that CILCO recommends a one year sunset provision be included in the final order, and that NewEnergy does not support use of ComEd's proposed methodology for periods beyond May, 2001. While IIEC does not support implementation of the ComEd alternative to the NFF even if it were placed into effect for a defined period of time, IIEC says that under any circumstance, the tariff should only be in effect for a defined period of time not to exceed one year given the uncertainties associated with any approach.~~

~~With regard to the specifics of its proposed modifications to ComEd's proposed Rider PPO MI, the Commission proposes that this tariff shall cease to be effective at the conclusion of the customer's May, 2001 billing period. The Commission proposes no other modification to this tariff. Subsequent to the entry of an order in this proceeding, ComEd may petition the Commission to extend the applicability of Rider PPO MI, either in its existing form or some other form. As noted above, ComEd says the Commission is precluded by statute from ordering ComEd to modify any provision of Rider PPO MI once it is approved. In light of the expedited schedule in this proceeding, and upon consideration of the record in this proceeding and the alleged lack of authority of the Commission to revisit this tariff, the Commission believes that approval of ComEd's proposal without such a modification would not be an appropriate result. This proposed modification will not eliminate any of the purported benefits which ComEd attributes to proposed Rider PPO MI. In addition, any customer that does not benefit from Rider PPO MI will have the option to utilize Rider PPO NFF. If it wishes, ComEd may attempt to demonstrate that Rider PPO MI should be adopted on a longer term basis in a proceeding with a less restrictive schedule that will provide the opportunity for a more comprehensive review of the proposal.~~

~~For purposes of implementing the ComEd proposal, as revised to reflect the Commission's proposed modifications found appropriate above, the Commission directs ComEd to leave in place its existing Rider PPO-NFF, except as modified in the following manner: the paragraph on 1st Revised Sheet No. 149, which allows a customer to switch from Rider PPO-NFF to Rider PPO-MI, may be implemented by ComEd; further, this change may only be implemented if ComEd accepts the Commission's proposed modification to Rider PPO-MI. ComEd's other proposed modifications to existing Rider PPO-NFF, which would preclude customers from selecting that Rider in the future and cause it to have no effect after December 31, 2000, are rejected by the Commission and may not be implemented.~~

~~In the event that ComEd accepts the proposed modification to Rider PPO-MI, ComEd is directed to modify Rate CTC, Customer Transition Charge, to comply with that modification as well as the corresponding modification to Rider PPO-NFF that would result.~~

~~With regard to ComEd's so-called wholesale offer, ComEd also proposes, as explained more fully above, to offer to all retail electric suppliers serving retail load in ComEd's territory, for a limited time, a wholesale full-requirements service priced at the market values determined using the Commission-approved NFF and market-based methodologies. ComEd says this offer is proposed in order to satisfy certain concerns raised during the workshops, and that energy under this offer would be as firm as native load. According to ComEd, this offer is contingent upon a Commission finding that ComEd's offer in conjunction with its proposed alternative market-based methodology is just and reasonable and would promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers. Subject to the other determinations made in this order, the Commission hereby finds that ComEd's wholesale offer will promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers.~~

V. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having reviewed the record herein, is of the opinion and finds that:

(1) ComEd is an Illinois corporation engaged in the business of furnishing electric service in the State of Illinois, and is a public utility as defined in Section 3-105 of the Public Utilities Act and an electric utility as defined in Section 16-102 of the Act;

(2) the Commission has jurisdiction over ComEd and of the subject matter of this docket;

(3) the statements of fact set forth in the prefatory portions of this Order are supported by the record and are hereby adopted as findings of fact;

(4) ComEd is **not** authorized to file tariffs **to implement its proposed alternative to the NFF**, ~~**which contain the Commission's proposed modifications as are described and found appropriate in the "Commission Conclusions" section of this Order above, with such tariffs to be effective May 1, 2000; absent such modifications, ComEd's proposal is rejected**~~ and the currently effective tariffs remain in place.

IT IS THEREFORE ORDERED by the Commission that ComEd is **not** authorized to file tariffs **to implement its proposed alternative to the NFF** ~~**consistent with the determinations and findings made in this Order, and containing the proposed modifications found appropriate in this Order, with such tariffs to be effective May 1, 2000; absent such modifications**~~, ComEd's proposal in this docket is rejected and the currently effective tariffs remain in place.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.800, this Order is final; it is not subject to the Administrative Review Law.

By proposed order of the Hearing Examiner this 21st day of April, 2000.

Hearing Examiner

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	)	
	)	
	)	Docket No. 00-0259
Petition for expedited approval of implementation of a market-based alternative tariff, to become effective on or before May 1, 2000, pursuant to Article IX and Section 16-112 of the Public Utilities Act	)	

NOTICE OF FILING

Please take note that on April 24, 2000 we mailed an original and twelve (12) copies of the Brief on Exceptions of Enron Energy Services, Inc. in the above-referenced proceeding to the Chief Clerk of the Illinois Commerce Commission, Donna Caton, 527 E. Capitol Avenue, P.O. Box 19280, Springfield, IL 62794-9280.

Dated: April 24, 2000

David I. Fein

CERTIFICATE OF SERVICE

I, David I. Fein, certify that copies of the foregoing Brief on Exceptions of Enron Energy Services, Inc. were served upon the parties on the attached service list via U.S. Mail and electronic delivery from 203 N. LaSalle Street, Chicago, Illinois 60601 on April 24, 2000.

David I. Fein

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DOCKET NO. 00-0259

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